

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

NATHAN B. MARTIN,)	
)	
Plaintiff,)	
vs.)	NO. CIV-08-1223-HE
)	
JOHN WHETSEL, ET AL.,)	
)	
Defendants.)	

ORDER


Plaintiff Nathan B. Martin, appearing *pro se*, filed suit pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell. Judge Purcell has recommended that defendants' motion to dismiss and/or motion for summary judgment be granted. The parties, by failing to object to the Report and Recommendation have waived their right to appellate review of the suggested dismissal. United States v. 2121 East 20th Street, 73 F.3d 1057, 1059-60 (10th Cir. 1996). After de novo review, the court concurs with the Magistrate Judge.

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. #29]. Defendants' motion to dismiss and/or for summary judgment [Doc. #23] is **GRANTED**. Plaintiff's claims in counts one, two, and three, for malicious prosecution, pre-arraignment delay, failure to provide counsel or allow him to receive or present evidence in probable cause determinations, and official capacity claims, are **DISMISSED** without prejudice for failure to state a claim. Judgment as a matter of law is issued in favor of defendants as to

plaintiff's claims in counts one, two, and three alleging Fourth Amendment violations in connection with the probable cause determinations. Judgment as a matter of law is issued in favor of defendants as to plaintiff's claims in counts four and five. In the event plaintiff believes the defects in the complaint as to counts one, two, and three are curable by amendment, the plaintiff may seek leave to file an amended complaint as to those claims only. Any such motion for leave shall have the proposed amended complaint attached to it and shall be filed within **twenty (20) days** from entry of this order. Absent such a motion, these claims will be deemed dismissed with prejudice.

IT IS SO ORDERED.

Dated this 26th day of June, 2009.



JOE HEATON
UNITED STATES DISTRICT JUDGE